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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1970

~~No. 1451~~

THOMAS CALLAHAN and THOMAS KAPATOS,
Petitioners,

vs.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONERS' REPLY BRIEF

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ROLL, SCHULLER AND JAMES.

June 23, 1971

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

IN THE

Supreme Court of the United States

October Term, 1970

No. 1731

THOMAS CALLAHAN and THOMAS KAPATOS,
Petitioners,

vs.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONERS' REPLY BRIEF

In response and reply to the Respondents' Brief in Opposition, the Petitioners state as follows:

1. This Court granted certiorari in *Kirby v. Illinois*, No. 6401, October Term 1970, on May 24, 1971, involving issues similar to those presented here.

2. One of the questions presented in *Kirby* is whether due process requires that a defendant be advised of his right to counsel prior to a pre-indictment show-up at a police station several hours after his arrest and 48 hours after the alleged crime occurred. Essentially the same

federal constitutional question emerges from the conviction of the petitioners here. Since our case involves a question closely related to the constitutional question presented in *Kirby,* it is urged that the grant of this petition is authorized in order to achieve a full review of the force and effect which will be given to the right to counsel in "line-up cases." In our case the petitioners were denied access to their retained counsel while they were surreptitiously placed in a secret line-up. Thus the constitutional failures in this case were far more egregious than those in *Kirby.*

3. Respondents' Brief in Opposition to this petition simply relies upon the Court of Appeals' opinion below. We have already pointed out in our petition what we believe are the major errors in the opinion below.

Conclusion

For these reasons, supplementing those in the petition, a writ of certiorari should issue to review the judgment below.

Respectfully submitted,

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June 23, 1971.